

§ 54.640

7. Billing expenses (*e.g.*, expense that vendors may charge for allocating costs to each health care provider in a network);

8. Helpdesk expenses (*e.g.*, equipment and related software, or services); and

9. Technical support services that provide more than basic maintenance.

(d) *Cost allocation for ineligible sites, services, or equipment*—(1) *Ineligible sites.* Eligible health care provider sites may share expenses with ineligible sites, as long as the ineligible sites pay their fair share of the expenses. An applicant may seek support for only the portion of a shared eligible expense attributable to eligible health care provider sites. To receive support, the applicant must ensure that ineligible sites pay their fair share of the expense. The fair share is determined as follows:

(i) If the vendor charges a separate and independent price for each site, an ineligible site must pay the full undiscounted price.

(ii) If there is no separate and independent price for each site, the applicant must prorate the undiscounted price for the “shared” service, equipment, or facility between eligible and ineligible sites on a proportional fully-distributed basis. Applicants must make this cost allocation using a method that is based on objective criteria and reasonably reflects the eligible usage of the shared service, equipment, or facility. The applicant bears the burden of demonstrating the reasonableness of the allocation method chosen.

(2) *Ineligible components of a single service or piece of equipment.* Applicants seeking support for a service or piece of equipment that includes an ineligible component must explicitly request in their requests for proposals that vendors include pricing for a comparable service or piece of equipment that is comprised of only eligible components. If the selected provider also submits a price for the eligible component on a stand-alone basis, the support amount is calculated based on the stand-alone price of the eligible component on a stand-alone basis. If the vendor does not offer the eligible component on a stand-alone basis, the full price of the entire service or piece of equipment must be taken into account, without regard to the value of the in-

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eligible components, when determining the most cost-effective bid.

(3) *Written description.* Applicants must submit a written description of their allocation method(s) to the Administrator with their funding requests.

(4) *Written agreement.* If ineligible entities participate in a network, the allocation method must be memorialized in writing, such as a formal agreement among network members, a master services contract, or for smaller consortia, a letter signed and dated by all (or each) ineligible entity and the Consortium Leader.

[78 FR 13987, Mar. 1, 2013]

§ 54.640 Eligible vendors.

(a) *Eligibility.* For purposes of the Healthcare Connect Fund, eligible vendors shall include any provider of equipment, facilities, or services that are eligible for support under Healthcare Connect Fund.

(b) *Obligation to assist health care providers.* Vendors in the Healthcare Connect Fund must certify, as a condition of receiving support, that they will provide to health care providers, on a timely basis, all information and documents regarding supported equipment, facilities, or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries. The Administrator may withhold disbursements for the vendor if the vendor, after written notice from the Administrator, fails to comply with this requirement.

[78 FR 13988, Mar. 1, 2013]

§ 54.642 Competitive bidding requirement and exemptions.

(a) *Competitive bidding requirement.* All applicants are required to engage in a competitive bidding process for supported services, facilities, or equipment consistent with the requirements set forth in this subpart, unless they qualify for one or more of the exemptions in paragraph (h) of this section. In addition, applicants may engage in competitive bidding even if they qualify for an exemption. Applicants who

utilize a competitive bidding exemption may proceed directly to filing a funding request as described in § 54.643.

(b) *Fair and open process.* (1) All entities participating in the Healthcare Connect Fund must conduct a fair and open competitive bidding process, consistent with all applicable requirements.

(2) Vendors who intend to bid to provide supported services, equipment, or facilities to a health care provider may not simultaneously help the health care provider choose a winning bid. Any vendor who submits a bid, and any individual or entity that has a financial interest in such a vendor, is prohibited from:

(i) Preparing, signing or submitting an applicant's request for services;

(ii) Serving as the Consortium Leader or other point of contact on behalf of applicant(s);

(iii) Being involved in setting bid evaluation criteria; or

(iv) Participating in the bid evaluation or vendor selection process (except in their role as potential vendors).

(3) All potential bidders must have access to the same information and must be treated in the same manner.

(4) All applicants and vendors must comply with any applicable state, Tribal, or local competitive bidding requirements. The competitive bidding requirements in this section apply in addition to state, Tribal, and local competitive bidding requirements and are not intended to preempt such state, Tribal, or local requirements.

(c) *Cost-effective.* For purposes of the Healthcare Connect Fund, "cost-effective" is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services.

(d) *Bid evaluation criteria.* Applicants must develop weighted evaluation criteria (e.g., scoring matrix) that demonstrate how the applicant will choose the most "cost-effective" bid before submitting a Request for Services. Price must be a primary factor, but need not be the only primary factor. A non-price factor can receive an equal

weight to price, but may not receive a greater weight than price.

(e) *Request for services.* Applicants must submit the following documents to the Administrator in order to initiate competitive bidding.

(1) *Form 461, including certifications.* The applicant must provide the following certifications as part of the request for services.

(i) The person signing the application is authorized to submit the application on behalf of the applicant and has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained therein are true.

(ii) The applicant has followed any applicable state, Tribal, or local procurement rules.

(iii) All Healthcare Connect Fund support will be used solely for purposes reasonably related to the provision of health care service or instruction that the HCP is legally authorized to provide under the law of the state in which the services are provided and will not be sold, resold, or transferred in consideration for money or any other thing of value.

(iv) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules.

(v) The applicant has reviewed all applicable requirements for the program and will comply with those requirements.

(2) *Bid evaluation criteria.* Requirements for bid evaluation criteria are described in paragraph (d) of this section.

(3) *Declaration of assistance.* All applicants must submit a "Declaration of Assistance" with their Request for Services. In the Declaration of Assistance, applicants must identify each and every consultant, vendor, and other outside expert, whether paid or unpaid, who aided in the preparation of their applications.

(4) *Request for proposal (if applicable).*

(i) Any applicant may use a request for proposals (RFP). Applicants who use an RFP must submit the RFP and any additional relevant bidding information to the Administrator with Form 461.

(ii) An applicant must submit an RFP:

(A) If it is required to issue an RFP under applicable State, Tribal, or local procurement rules or regulations;

(B) If the applicant is a consortium seeking more than \$100,000 in program support during the funding year, including applications that seek more than \$100,000 in program support for a multi-year commitment; or

(C) If the applicant is a consortium seeking support for participant-constructed and owned network facilities.

(iii) *RFP requirements.* (A) An RFP must provide sufficient information to enable an effective competitive bidding process, including describing the health care provider's service needs and defining the scope of the project and network costs (if applicable).

(B) An RFP must specify the period during which bids will be accepted.

(C) An RFP must include the bid evaluation criteria described in paragraph (d) of this section, and solicit sufficient information so that the criteria can be applied effectively.

(D) Consortium applicants seeking support for long-term capital investments whose useful life extends beyond the period of the funding commitment (*e.g.*, facilities constructed and owned by the applicant, fiber indefeasible rights of use) must seek bids in the same RFP from vendors who propose to meet those needs via services provided over vendor-owned facilities, for a time period comparable to the life of the proposed capital investment.

(E) Applicants may prepare RFPs in any manner that complies with the rules in this subpart and any applicable state, Tribal, or local procurement rules or regulations.

(5) *Additional requirements for consortium applicants.* (i) *Network plan.* Consortium applicants must submit a narrative describing specific elements of their network plan with their Request for Services. Consortia applicants are required to use program support for the purposes described in their narrative. The required elements of the narrative include:

(A) Goals and objectives of the network;

(B) Strategy for aggregating the specific needs of health care providers (including providers that serve rural areas) within a state or region;

(C) Strategy for leveraging existing technology to adopt the most efficient and cost effective means of connecting those providers;

(D) How the supported network will be used to improve or provide health care delivery;

(E) Any previous experience in developing and managing health information technology (including telemedicine) programs; and

(F) A project management plan outlining the project's leadership and management structure, and a work plan, schedule, and budget.

(ii) *Letters of agency.* Consortium applicants must submit letters of agency pursuant to § 54.632.

(f) *Public posting by the Administrator.* The Administrator shall post on its web site the following competitive bidding documents, as applicable:

- (1) Form 461,
- (2) Bid evaluation criteria,
- (3) Request for proposal, and
- (4) Network plan.

(g) *28-day waiting period.* After posting the documents described in paragraph (f) of this section on its Web site, the Administrator shall send confirmation of the posting to the applicant. The applicant shall wait at least 28 days from the date on which its competitive bidding documents are posted on the Web site before selecting and committing to a vendor.

(1) *Selection of the most "cost-effective" bid and contract negotiation.* Each applicant subject to competitive bidding is required to certify to the Administrator that the selected bid is, to the best of the applicant's knowledge, the most cost-effective option available. Applicants are required to submit the documentation listed in § 54.643 to support their certifications.

(2) Applicants who plan to request evergreen status under § 54.642(h)(4)(ii) must enter into a contract that identifies both parties, is signed and dated by the health care provider or Consortium Leader after the 28-day waiting period expires, and specifies the type, term, and cost of service.

(h) *Exemptions to competitive bidding requirements.* (1) *Annual undiscounted cost of \$10,000 or less.* An applicant that seeks support for \$10,000 or less of total undiscounted eligible expenses for a

single year is exempt from the competitive bidding requirements under this section, if the term of the contract is one year or less.

(2) *Government Master Service Agreement (MSA)*. Eligible health care providers that seek support for services and equipment purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others, if such MSAs were awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements, are exempt from the competitive bidding requirements under this section.

(3) *Master Service Agreements approved under the Pilot Program or Healthcare Connect Fund*. A eligible health care provider site may opt into an existing MSA approved under the Pilot Program or Healthcare Connect Fund and seek support for services and equipment purchased from the MSA without triggering the competitive bidding requirements under this section, if the MSA was developed and negotiated in response to an RFP that specifically solicited proposals that included a mechanism for adding additional sites to the MSA.

(4) *Evergreen contracts*. (i) Subject to the provisions in § 54.644, the Administrator may designate a multi-year contract as “evergreen,” which means that the service(s) covered by the contract need not be re-bid during the contract term.

(ii) A contract entered into by a health care provider or consortium as a result of competitive bidding may be designated as evergreen if it meets all of the following requirements:

(A) Is signed by the individual health care provider or consortium lead entity;

(B) Specifies the service type, bandwidth and quantity;

(C) Specifies the term of the contract;

(D) Specifies the cost of services to be provided; and

(E) Includes the physical location or other identifying information of the health care provider sites purchasing from the contract.

(iii) Participants may exercise voluntary options to extend an evergreen

contract without undergoing additional competitive bidding, if:

(A) The voluntary extension(s) is memorialized in the evergreen contract;

(B) The decision to extend the contract occurs before the participant files its funding request for the funding year when the contract would otherwise expire; and

(C) The voluntary extension(s) do not exceed five years in the aggregate.

(5) *Schools and libraries program master contracts*. Subject to the provisions in §§ 54.500, 54.501(c)(1), and 54.503, an eligible health care provider in a consortium with participants in the schools and libraries universal service support program and a party to the consortium’s existing contract is exempt from the Healthcare Connect Fund competitive bidding requirements if the contract was approved in the schools and libraries universal service support program as a master contract. The health care provider must comply with all Healthcare Connect Fund rules and procedures except for those applicable to competitive bidding.

[78 FR 13988, Mar. 1, 2013, as amended at 79 FR 49203, Aug. 19, 2014]

§ 54.643 Funding commitments.

(a) Once a vendor is selected, applicants must submit a “Funding Request” (and supporting documentation) to provide information about the services, equipment, or facilities selected and certify that the services selected were the most cost-effective option of the offers received. The following information should be submitted to the Administrator with the Funding Request.

(1) *Request for funding*. The applicant shall submit a request for funding (Form 462) to identify the service(s), equipment, or facilities; rates; vendor(s); and date(s) of vendor selection.

(2) *Certifications*. The applicant must provide the following certifications as part of the request for funding:

(i) The person signing the application is authorized to submit the application on behalf of the applicant and has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained therein are true.